

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KIMBERLY S. CROMWELL,

Plaintiff,

v.

DEUTSHE BANK NATIONAL TRUST
COMPANY, et al.,

Defendants.

No. C 11-2693 PJH

ORDER

Plaintiff Kimberly S. Cromwell filed this action on June 3, 2011. Defendant Deutsche Bank National Trust Company filed a motion to dismiss on July 5, 2011, arguing that plaintiff's claims were barred by res judicata. Plaintiff filed an opposition on July 25, 2011, arguing that res judicata does not apply in this case. Defendant filed a reply to the opposition on August 1, 2011, stating that the prior argument regarding res judicata had been made in error, and that the real argument should have been that the court should stay its proceedings in deference to pending state court proceedings, pursuant to Colorado River Conservation Dist. v. United States, 424 U.S. 800 (1976).

As defendant's abstention argument is a new argument made for the first time in the reply brief, plaintiff must be given an opportunity to respond. Accordingly, plaintiff may file a response to defendant's new argument, no later than August 17, 2011.

1 The August 24, 2011 hearing date is VACATED. The court will review the papers
2 and will reset the hearing if necessary. Otherwise, the court will decide the motion on the
3 papers.

4
5 **IT IS SO ORDERED.**

6 Dated: August 2, 2011



PHYLLIS J. HAMILTON
United States District Judge